1978

Robert B. Hansen Guardian Ad Litem For Beverly Gossett, An Incompetent v. William P. Gossett : Brief of Respondent William P. Gossett

Utah Supreme Court

IN THE SUPREME COURT

OF THE

STATE OF UTAH

ROBERT B. HANSEN, Guardian Ad Litem for BEVERLY GOSSETT, an Incompetent,	:	
Plaintiff/Appellant,	:	
vs.	:	Case No. [illegible]
WILLIAM P. GOSSETT,	:	
Defendant/Respondent.	:	

BRIEF OF RESPONDENT

WILLIAM P. GOSSETT

Appeal from the Judgment of the Second [illegible]
Court in and for the County of Weber, [illegible]
Utah, the Honorable G. Hal Taylor, [illegible]

GARY L. [illegible]
Attorney[illegible]
243[illegible]
Ogden, [illegible]

ROBERT B. HANSEN
Attorney for Appellant
838 83rd Avenue
Salt Lake City, Utah 84103

TABLE OF CONTENTS

CASES CITED

AUTHORITIES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

ROBERT B. HANSEN, Guardian Ad Litem for BEVERLY GOSSETT, an Incompetent,	:	
Plaintiff/Appellant,	:	Case No. 15471
vs.	:	
WILLIAM P. GOSSETT,	:	
Defendant/Respondent:		

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

That the Plaintiff and Appellant Beverly Gossett by Robert B. Hansen, Guardian Ad Litem, filed a Complaint against the Defendant and Respondent William P. Gossett, in an attempt to collect past due child support and past due alimony, awarded by a Sister State, and further seeking an award of current alimony. From an adverse decision at trial, Plaintiff/Appellant appeals to this Court.

DISPOSITION OF CASE IN LOWER COURT

Trial on the merits was held before the Honorable G. Hal Taylor, District Court Judge, in the District Court of Weber County, State of Utah. After the Court heard evidence presented

to it by both parties, it entered its Findings of Fact and Conclusions of Law and entered its Judgment accordingly: From the Judgment Plaintiff/Appellant now appeals.

The District Court denied Plaintiff relief as to child support and alimony on the basis that the children lived with the Defendant/Respondent during 1963 and 1964, and thereafter resided with their grandmother until their majority or emancipation, and that the Plaintiff/Appellant has not retained the physical care, custody or control of said minor children since 1962. That the District Court further denied the Plaintiff/Appellant's relief on the issue of alimony based upon an agreement between the parties to establish a life insurance policy, constituting an accord and satisfaction and a release of all claims. That said District Court further ordered that a trust account be established for the benefit of the State of California, in the event said State makes demands for any reimbursement for services rendered to the Plaintiff/Appellant, and if no demands were forthcoming, upon Plaintiff/Appellant's death, the Defendant/Respondent would be entitled to retain all monies thereunder.

NATURE OF RELIEF SOUGHT ON APPEAL

Defendant/Respondent seeks to have the Judgment and Findings of the lower Court affirmed with respect to past child support, and past due alimony. Defendant/Respondent seeks a reversal of the lower Court's judgment requiring the establish-

of a trust account in favor of the State of California who is not a party to this action.

STATEMENT OF FACTS

Plaintiff/Appellant and Defendant/Respondent were divorced in 1949. Defendant/Respondent was required to pay $75.00 per month alimony and $25.00 per month support for each of the three minor children.

Plaintiff/Appellant Beverly Gossett, the natural mother, had custody of the minor children until 1962, when she became mentally incapacitated and declared incompetent and was committed to the California State Mental Hospital as evidenced by Plaintiff/Appellant's Exhibits 1 and 2, and she is still committed therein.

Based upon the Plaintiff/Appellant's condition, Robert B. Hansen, an attorney duly licensed to practice law in the State of Utah and in the State of California, acting on behalf of his sister, the Plaintiff/Appellant herein, addressed a letter to the Defendant/Respondent dated June 13,1962, advising the Defendant/Respondent of the mental condition and the inability of the Plaintiff/Appellant to care for said minor children, see Defendant's Exhibit 1. Thereafter, Robert B. Hansen presented an Affidavit to the Defendant/Respondent, dated August 28,1962, see Defendant's Exhibit 2, granting the care, custody and control of said minor children to the Defendant/Respondent herein.

Pursuant to said documents, the three children were transferred from the Plaintiff/Appellant's residence in Merced, California, to Chula Vista, California, the Defendant/Respondent residence. That Defendant/Respondent assumed actual and physical control over said minor children thereafter. (P. 16, line 20, Record On Appeal). That said documents were prepared and executed for the purpose of bestowing upon the Defendant/Respondent physical custody and a legal power and right to have said minor children. (P. 18, lines 8 and 9, Record On Appeal). Defendant assumed actual and physical control of said minor children during August of 1962.

Based upon said documents and the representations of Plaintiff/Appellant's attorney, Robert B. Hansen, the Defendant/Respondent did not seek a Court Order approving the Stipulation and Agreement and thereafter said minor children lived with the Defendant for approximately two years and enjoyed his support and benefit and attended school.

Thereafter, Kathrine Hansen, the mother of the Plaintiff/Appellant, and the mother of Robert B. Hansen, took said minor children and they resided with her, their grandmother, until the two older children were married in 1971 and 1972 respectively, and until the youngest child became of age on the 7th day of September, 1973. Except that Doris Lee Gossett resided with

the Defendant/Respondent from 1969 until 1972 when she returned to her grandmother. (P. 21, lines 3 to 9, Record on Appeal).

Said children have not resided with the Plaintiff/Appellant or been supported in any manner whatsoever by the Plaintiff/Appellant since 1962.

The grandmother, Kathrine Hansen, assumed the physical care and custody of the minor children when she took them from the Defendant/Respondent on a voluntary and gratuitous basis and has not asked or expected reimbursement from the Defendant/Respondent herein except that she be named as a partial beneficiary on the Defendant/Respondent's life insurance policy.

Thereafter Robert B. Hansen, acting on behalf of the Plaintiff/Appellant, and his mother, Kathrine Hansen, induced and agreed with the Defendant/Respondent herein, to obtain a life insurance policy through Northwestern Mutual Life in the amount of $50,000.00. Said policy designated Kathrine Hansen beneficiary in the amount of three-tenths thereof, Robert B. Hansen beneficiary in the amount of one-tenth thereof, and Kirk Gossett beneficiary in the amount of six-tenths. That the Defendant/Respondent obtained said policy in consideration of settling any and all claims, both past, present and future, (P. 28, lines 28-30, Record On Appeal) including alimony (P. 29, lines 1-8, Record On Appeal) and child support (P. 29, lines 9-13).

This suit was brought by Robert B. Hansen in an attempt to obtain monies for his mother Kathrine Hansen, and not for the Plaintiff/Appellant, his incapacitated sister; Kathrine Hansen, is not a party to this action. (P. 31, lines 12-28).

ARGUMENT

POINT I.

ROBERT B. HANSEN, PLAINTIFF/APPELLANT'S ATTORNEY GRANTED CUSTODY OF SAID MINOR CHILDREN TO WILLIAM GOSSETT AND WHERE THIRD PARTY GRATUITOUSLY REARS SAID CHILDREN THIS IS A COMPLETE DEFENSE TO PLAINTIFF'S CLAIM FOR SUPPORT.

The Record on Appeal clearly reflects an agreement between Robert B. Hansen, Plaintiff/Appellant's attorney, and William Gossett, effecting a transfer of the physical custod of said minor children to William Gossett, the natural father, based upon the incapacity and committment of Beverly Gossett, their mother, to a hospital in California.

Certainly, these are legitimate reasons for transferri custody to the natural father, and the Affidavit of Robert B. Hansen and the conduct of William Gossett in assuming the care, custody and control of the minor children, is, in effect, a stipulation and agreement between the parties to effect a transfer of custody. Although it is true that a Court order of approval was not obtained, it was the obvious intent of all

parties concerned, to change the custody of the minor children and vest same in William Gossett.

Since 1962, the Plaintiff/Appellant has not had the children in her care, custody or control, nor has she made any support payments whatsoever on their behalf, and is now seeking a windfall.

Thereafter, in approximately 1964, the grandmother voluntarily obtained the physicial custody of said minor children and gratuitously supported and maintained said minor children.

In the case of Armstrong v. Green, 68 So. 2d 834, (Ala. 1953). wherein the Court held at page 836 referring to the case of Mason v. Mason, 148 Or. 34, 34P. 2d 328.

> "It was held that a wife who had abandoned the children was not entitled to recover payments during the period of abandonment."

The Court further reciting that the case was a question of first impression said additionally,

> "In a situation where the child has been adequately supported by third persons without exception and we might add in this case without desire for reimbursement, it does not seem reasonable that the mother can have any standing in an action brought by her for the unpaid installments."

The Court further said,

> "A legal defense would be subsequent payment, either by the judgment debtor or by a volunteer... if such support had been provided either by plaintiff or by a volunteer who acted without expectation or claim of reimbursement the debt is paid... the payment by another without expectation of reimbursement would satisfy the obligation".

The Court further said that:

> "If the wife did not pay for the support of the child and such support was voluntarily furnished by a third party,... and nothing was lost to the child by Plaintiff's default, then the breach by the husband of the duty to pay would be only technical. To award to either the mother, for the benefit of the child, or directly to the child, a sum representing the amount unpaid would be an unjust and inequitable enrichment. Neither of them could recover in an action..." (Also see Swanton v. Curly, 273 N.Y. 325,7 N.E. 2d 250: Probst v. Probst, 259 App. Div. 1090, 21 N.Y.S. 2d 249 Viall v. Viall, 263 App. Div. 548, 33 N.Y.S. 2d 975: Nelson, divorce and annulment, Volume 2, page 334: 27 C.J.S., Divorce Number 321, page 1228.

Therefore, Plaintiff would be unjustly enriched in this cause of action or claim for relief in the event she were awarded child support while not having custody of said minor children or not paying for their support.

That the Plaintiff is guilty of laches and the Courts recognize that laches may be a defense to an action or proceeding to enforce payment of alimony, Rupp v. Rupp, 129 Cal. App. 2d 23 276 P 2d 144, Piacqadio v. Piacqadio, 22 Conn. Supp. 47, 159 A. 2d 628: Grossman v. Grossman, 242 S.C. 298, 130 S.E. 2d 850. And in several cases, the Court found that a wife had in fact been guilty of laches in enforcement of alimony and held that such laches constituted a defense in the action or proceeding to enforce payment. Again see Rupp v. Rupp, and Piacqadio v. Piacqadio, and 137 ALR 896, 70 ALR 2d 1272.

This Court, being a Court of equity, should assert an equitable defense against the Plaintiff/Appellant hereunder not only for the period of time while the children were in Defendant/Respondent's physical control and custody, but during all periods thereafter.

In the case of Baggs v. Anderson, -U2d-, 528 P. 2d 141(1974) , the Supreme Court of the State of Utah recognized at page 143 that there would be certain circumstances under which there may arise an estoppel to collect money accrued under a divorce decree, the same as there may be an estoppel to enforce any other obligation, including the payment of money. However, the Court believed that the rules of estoppel applicable elsewhere in the law are similarly applicable to support proceedings. An essential requirement is that there

must be some conduct of the obligee/plaintiff which reasonably induces the obligor/defendant to rely thereon and make some substantial change in his position to his detriment.

In that case, the Court felt that there was no consideration given for the agreement between the parties that the Defendant would not have to pay any future support money. In the case at bar, the Defendant's agreement incurred substantial payments of insurance premiums over the years, and the Defendant/Respondent relied to his detriment on the agreement to the extent of taking care of the children himself for almost two years, and in addition thereto, allowing the grandmother, Kathrine Hansen, to take said minor children without further Court order or a written agreement approved by Court order to change their custody again in favor of Kathrine Hansen.

POINT II

THE COURT PROPERLY RULED THAT KATHRINE HANSEN ENTERED INTO AN AGREEMENT WITH WILLIAM GOSSETT IN LIEU OF ANY CONTRIBUTION OF SUPPORT.

Robert B. Hansen on behalf of Plaintiff/Appellant, and acting as her attorney and brother entered into an agreement with William Gossett, Defendant/Respondent settling all claims between the parties. (P. 17, 18, 28, lines 28-30, P. 29 lines 1-7, Record On Appeal), and Defendant/Appellant Exhibits 1 and 2.)

The Court found that there was a binding agreement entered into by the parties and the Court's ruling should be affirmed.

In the case of Smith v. Gallegos, 16 Utah 2nd 344, 400 P.2d 570; and Efco Distributing Inc. v. Perrin, 17 Utah 2nd 375, 412 P.2nd 615; and Schow v. Guardtone Inc. 18 Utah 2nd 135, 417 P.2d 643, the Court held that disputed facts must be reviewed in the light most favorable to the Judgment entered in the trial court.

The Judgment of the trial court is presumed to be correct. See Robinson v. Hreinson, 17 Utah 2d 261, 409 P.2d 121, C.G. Harman Co. v. Loyd 28 Utah 2d 112, 499 P.2d 124; Searle v. Searle, 522 P.2d 697.

Also, findings of the trial court should be sustained unless evedence clearly preporderates against them. See Elton v. Utah State Retirement Board, 28 Utah 2nd 368, 503 P.2d 137.

POINT III

THE COURT PROPERLY RULED THAT PAYMENTS MADE BY DEFENDANT AFTER SEPTEMBER, 1973, WERE MADE VOLUNTARILY RATHER THAN PURSUANT TO THE DECREE OF DIVORCE OF THE PARTIES.

Kathrine Hansen had not filed an action for support, and had failed to obtain a custody order or otherwise obtain any support orders, and therefore any payments paid would be in favor

of a third party, and obviously would not be pursuant to a Decree of Divorce, since there is no Court order in the Decree requiring the Defendant/Respondent to pay any monies whatsoever to Kathrine Hansen, and therefore said payments are a gratuity.

Said payments were made pursuant to pressure being brought upon the Defendant/Respondent by Robert Hansen's co-deputies and were made to relieve pressure from the Attorney General's Office. (Page 40, lines 28-30, and Page 41, line 1, Record On Appeal).

In addition, demands for payment for Kirk Gossett were made after he attained his majority and Defendant/Respondent believed there was no obligation to do so. (Page 39, lines 26-30, Record on Appeal).

POINT IV

THE COURT PROPERLY RULED THAT THE LAST INSURANCE POLICY WAS FULLY REINSTATED AND THAT NO DAMAGES HAD OCCURRED.

The life insurance policy lapsed, and a new policy was issued by the Northwestern Mutual Life Insurance Company of Milwaukee. The Defendant obviously did not become demised during the period of lapse, and with the new policy, Number 7063551, providing for the same beneficiaries as requested by Defendant/Respondent, Pages 26 and 27 of the Record On Appeal. Plaintiff/Appellant has suffered no damage, since she was not designated a beneficiary under the first policy,

and since the Defendant is still alive and covered by insurance, the lapse is of no legal consequence.

POINT V

THE COURT ERRED IN CONCLUDING THAT THE STATE OF CALIFORNIA MAY RECEIVE ANY OF THE FUNDS ORDERED DEPOSITED IN A SPECIAL TRUST ACCOUNT AND IN THE EVENT OF THE DEATH OF BEVERLY GOSSETT ANY FUNDS THEREIN SHOULD REVERT TO THE DEFENDANT.

The Court should have ruled that there was no cause of action on behalf of Plaintiff, and the Court should not have established a special trust account in favor of the State of California who is not a party to this action. The Court recognized that the State of California could bring a subrogation type action against William Gossett and unless that is forthcoming, at the death of the Plaintiff/Appellant, he would be entitled to all of said funds.

In addition thereto, and consistent with the Court's ruling in this case, the agreement between William Gossett, Defendant/Respondent, and Robert B. Hansen, constituted a bar to Plaintiff/Appellant's receiving any additional alimony whatsoever.

The Court should have also terminated alimony after the expiration of twenty-one years under Defendant/Respondent's Application for Modification and Termination of Alimony based

upon a material change of circumstances and the elapse of twenty-one years.

POINT VI

THE COURT PROPERLY RULED IN MAKING ITS CONCLUSIONS OF LAW UNDER PARAGRAPH FIVE AND ITS JUDGMENT UNDER PARAGRAPH FIVE.

Plaintiff/Appellant's argument is without merit since the Court sat as the trier of fact, and no jury was empaneled, and Paragraph 5 of the Conclusions of Law properly concluded that there was an agreement in lieu of support and alimony and that same had been reinstated which bars further proceedings. There were obviously no damages to the Plaintiff since she was not designated on the original policy as a beneficiary, and she is in no different position prior to the lapse of said policy than at the time of trial.

The Judgment under Paragraph 5 simply reiterates and recites the Conclusion of Law in the form of a Judgment and is not reversible error.

The Guardian, Robert B. Hansen, failed to ask the Court for any attorney's fees whatsoever, and failed to present any evidence whatsoever in regard to the reasonableness of attorney's fees expended in this case, and the Court did not award any attorney's fees.

The Plaintiff/Appellant and Guardian Robert B. Hansen are foreclosed from seeking attorney's fees for the first time on appeal.

POINT VII

THE COURT PROPERLY CONCLUDED THAT THE SUBJECT POLICY HAD BEEN REINSTATED AND IT HAS CURED ANY BREACHES, AND PROPERLY FAILED TO AWARD ATTORNEY'S FEES.

Plaintiff/Appellant and Robert B. Hansen failed to ask for attorney's fees at the time of trial and failed to present any evidence on that issue and are now foreclosed from doing so.

The Court properly held on the basis of the entire record that the Plaintiff/Appellant had suffered no damages since Mr. Gossett is still alive and the new insurance policy is in full force and effect. In addition, Plaintiff/Appellant was not designated on the original insurance policy and has suffered no damage whatsoever.

POINT VIII

THE COURT PROPERLY CONCLUDED THAT NO ATTORNEY'S FEES SHOULD BE AWARDED

Counsel did not present any evidence of attorney's fees nor did he seek attorney's fees during the trial and is foreclosed from seeking attorney's fees for the first time on this Appeal by introducing evidence which was not introduced at the trial.

POINT IX

THE COURT PROPERLY RULED IN PARAGRAPH ONE OF ITS JUDGMENT THAT THE PLAINTIFF/APPELLANT BEVERLY GOSSETT IS NOT AWARDED ANY CHILD SUPPORT WHATSOEVER OR ALIMONY.

The Record On Appeal, read as a whole, overwhelmingly supports the proposition that if Plaintiff were awarded child support, she would receive a windfall and be unjustly enriched when she did not have the physical care, custody and control of said minor children and has not contributed to their support during their minority.

The Court found that the agreement between the Defendant/Respondent and Plaintiff/Appellant's agent/attorney, Robert B. Hansen, was a bar to the award of any alimony and the Court resolved the question of fact and issue thereon in favor of the Defendant/Respondent, which is unrefuted by competent evidence in the record.

POINT X

THE COURT PROPERLY RULED THAT THE GUARDIAN ROBERT B. HANSEN SHALL NOT DELIVER ANY MONIES WHATSOEVER TO KATHRINE M. HANSEN, HIS MOTHER, WHO IS NOT A PARTY TO THIS ACTION.

The Court expressed its apprehension in the law suit based upon the testimony of William Gossett and the representation of Defendant/Respondent's attorney at page 47, lines 3-12, and

lines 27 - 30, page 48, lines 1-6, the Record On Appeal. Kathrine Hansen is not a party to this action and her claims should not be resolved in this action and Robert B. Hansen should be prevented from delivering any monies whatsoever to his mother, Kathrine Hansen. Any monies which may be declared due and owing and payable into a trust account, should not be awarded to the Plaintiff/Appellant herein, unless the State of California, by and through its appropriate representatives have an opportunity to make claim and participate in the division thereof.

There is ample unrefuted testimony by the Defendant/Respondent William Gossett at p. 17, p. 18, and p. 28, lines 28 through 30, p. 29, lines 1 through 7, (Record On Appeal) and Defendant/Respondent's Exhibits 1 and 2 that an agreement was entered into and based upon said agreement the Defendant/Respondent assumed the physical care, custody and control of said minor children for approximately two years, and enrolled them in school, p.19 (Record On Appeal).

The terms of said agreement settle any and all claims between the parties, including alimony and child support. The terms of the agreement constitute a bar to Plaintiff/Appellant's claims.

CONCLUSION

The District Court appropriately ruled Plaintiff/Appellant was not entitled to child support since this would constitute unjust enrichment and a windfall to her. This Honorable Court should also affirm the District Court ruling that the life insurance policy constituted an agreement to satisfy any and all claims whatsoever in regard to the alimony both past, present and future. The Judgment of the trial Court should be affirmed. The only modification should be that no trust account be established and the alimony terminated. In addition, this Honorable Court should award Defendant/Respondent a reasonable attorney's fee for the defense of this appeal.

GARY L. GALE of GALE and HAVAS
Attorney for Defendant/Respondent
2438 Washington Boulevard
Ogden, Utah 84401

CERTIFICATE OF MAILING

Mailed a true and correct copy of the above and foregoing Brief Of Respondent to attorney for plaintiff, Robert B. Hansen, 838 - 83 Avenue, Salt Lake City, Utah 84103, postage prepaid on this 29th day of June, 1978.

Rebecca Fleming

REBECCA FLEMING, Secretary